

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Shane P. Reichle,
Stafford Springs

File No. 2015-008

AGREEMENT CONTAINING CONSENT ORDER

This Agreement, by and between Edward Muska (hereinafter "Respondent"), of the Town of Stafford, County of Tolland, State of Connecticut and the authorized representative of the State Elections Enforcement Commission is entered into in accordance with Section 9-7b-54 of the Regulations of Connecticut State Agencies and Section 4-177 (c) of the General Statutes of Connecticut. In accordance herewith, the parties agree that:

1. Complainant alleged a violation of General Statutes § 9-210 by Respondent in that he served both as Town Attorney and also the Chairman of the Stafford Board of Finance and was therefore holding "incompatible offices," which is prohibited by § 9-210.
2. Respondent is a practicing attorney in Connecticut and has no prior history with the Commission. Respondent has been forthcoming cooperative in response to this complaint and investigation.
3. By way of background, Respondent has served on the Stafford Board of Finance since 2005 and simultaneously as Stafford Town Attorney since 2009.
4. General Statutes § 9-210, provides:

No selectman shall hold the office of town clerk, town treasurer or collector of town taxes during the same official year, nor that of judge of probate for the district within which such town is located; no town treasurer shall hold the office of collector of town taxes during the same official year; nor shall any town clerk or selectman be elected a registrar of voters; and no registrar of voters shall hold the office of town clerk. No assessor shall act as a member of the board of assessment appeals. ***No member of the board of finance of any town shall hold any salaried town office unless otherwise provided by special act. ...***
[Emphasis added.]
5. The Commission notes that Respondent asserts that he, in good faith, did not view himself as an employee of Stafford or as otherwise holding "incompatible offices" pursuant to General Statute § 9-210 based on his interpretation and application of that statute to his circumstances.

6. The Commission finds that Respondent, at all times relevant to this complaint was a member of the Town of Stafford Board of Finance, while also being compensated as the Stafford Town Attorney. Further, the Commission finds that the Town of Stafford has an agreement with Respondent in the amount of \$15,000.00, which is drawn down by Respondent *on a monthly basis* of \$1,250.00.
7. The parties do not dispute that the compensation agreement, as detailed in paragraph 6 above, is a budgeted item for the Town of Stafford for the provision of legal services by Respondent to the town and identified by the town as an expenditure for “Legal Services – Retainer”.
8. Further, evidence indicates that Respondent assumed the opportunity to serve as Town Attorney from his law partner in 2009. The latter was appointed as town attorney by motion of the Stafford Board of Selectman on January 12, 2006. Additionally, the Commission finds that at the time of the aforementioned appointment Attorney Wendell Avery was appointed Assistant Town Attorney.
9. Finally, the Commission finds that the above January 12, 2006 appointment by the Stafford Board of Selectman, as reflected in a resolution recorded in the minutes of that meeting, evidences and underscores the intent of the Selectmen to appoint a “Town Attorney.”
10. The threshold question raised by this complaint is whether being on a legal retainer qualified Respondent as the holder of a “salaried town office” in Stafford pursuant to General Statutes § 9-210 and therefore precluded him from also holding the “incompatible office” of Board of Finance member pursuant to § 9-210.
11. For purposes of this analysis, the Commission notes that the term “salaried” is not defined in General Statutes Title 9, Elections. Therefore, consistent with its past practices and standards of statutory construction, the Commission will look to alternative sources, including the dictionary, to identify the meaning of the aforementioned terms.

12. More specifically, where a term is not defined in the statute, it is appropriate to “look to the dictionary definition of the [term] to ascertain [its] commonly approved meaning.” *R.C. Equity Group, LLC v. Zoning Commission*, 285 Conn. 240, 254 n. 17, 939 A.2d 1122 (2008); *see also Groton v. Mardie Lane Homes, LLC*, 286 Conn. 280, 288, 943 A.2d 449 (2008) (*If a statute or regulation does not sufficiently define a term, it is appropriate to look to the common understanding of the term as expressed in a dictionary.* [internal quotation marks omitted]).
13. Black’s Law Dictionary, (6th ed.), provides the following definition:

Salary. A reward of recompense for services performed. In a more limited sense, a fixed periodical compensation for services rendered. ***A stated compensation paid periodically as by the year, month, or other fixed period, in contrast to wages which are normally based on an hourly rate.*** [Emphasis added. Internal citations omitted.]
14. The Commission finds, consistent with the dictionary definition of “salary,” as detailed above, that “salaried” for purposes of applying General Statutes § 9-210 in this instance, means that an individual earns a “stated compensation” paid periodically, as by the year, month, or other fixed period, in contrast to compensation which is paid in wages or on an “hourly rate.”
15. The Commission concludes, based on a plain reading of the statute, as reinforced by the definition of “salary” provided above, therefore that Respondent based on his fixed annual compensation for the provision of legal services to the Town of Stafford and pursuant to General Statutes § 9-210 *is* “salaried” as Town Attorney for the Town of Stafford.
16. Additionally, the Commission concludes upon complaint and investigation, and for the reasons detailed herein, that that the position of Stafford Town Attorney, with an annually budgeted stipend that is drawn down in monthly increments, and membership on the Stafford Board of Finance are “incompatible offices” for purposes of General Statutes § 9-210, and therefore the Commission concludes that Respondent is precluded by that statute from simultaneously holding both offices.

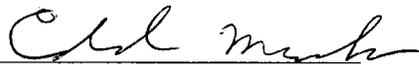
17. It follows that pursuant to General Statutes § 9-210 Respondent cannot continue to serve both as a member of the Board of Finance and Stafford Town Attorney and must relinquish one position or the other in order to avoid, so long as he simultaneously holds such “incompatible offices” in Stafford, the prohibition of § 9-210.
18. The Respondent admits all jurisdictional facts and agrees that this Agreement and Order shall have the same force and effect as a final decision and Order entered after a full hearing and shall become final when adopted by the Commission. The Respondent shall receive a copy hereof as provided in Section 9-7b-56 of the Regulations of Connecticut State Agencies.
19. The Respondent waives:
 - a. Any further procedural steps;
 - b. The requirement that the Commission’s decision contain a statement of findings of fact and conclusions of law, separately stated; and
 - c. All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered into pursuant to this Agreement.
20. It is understood and agreed that this Agreement will be submitted to the Commission for consideration at its next meeting and, if the Commission does not accept it, it is withdrawn and may not be used as an admission by either party in any subsequent hearing, if the same becomes necessary.
21. Upon the Respondent’s compliance with the Order hereinafter stated, the Commission shall not initiate any further proceedings pertaining to this matter.

ORDER

IT IS ORDERED THAT that the Respondent shall henceforth strictly comply with the requirements of General Statutes § 9-210.

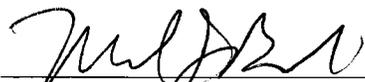
IT IS FURTHER ORDERED THAT the Respondent, within 30 days of the adoption of this agreement, shall voluntarily resign from either the Stafford Board of Finance or as Stafford Town Attorney and not seek or accept further appointments to “incompatible offices” pursuant to General Statutes § 9-210.

The Respondent:



Edward Muska
2 East Main Street
Stafford Springs, Connecticut

For the State of Connecticut:

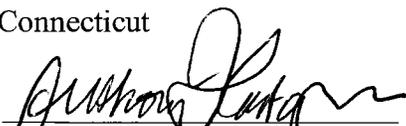
BY: 

Michael J. Brandi Esq.
Executive Director and General Counsel and
Authorized Representative of the
State Elections Enforcement Commission
20 Trinity St., Suite 101
Hartford, Connecticut

Dated: Oct. 1, 2015

Dated: 10/1/15

Adopted this 20th day of October, 2015 at Hartford, Connecticut


Anthony J. Castagno, Chairman
By Order of the Commission

**RECEIVED
STATE ELECTIONS**

OCT 01 2015

ENFORCEMENT COMMISSION